

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW HARVEY,
Petitioner,

v.

BEN CURRY, Warden,
Respondent.

No. C 07-00204 SBA (PR)

**ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY AS
UNNECESSARY; GRANTING REQUEST
TO PROCEED IN FORMA PAUPERIS
ON APPEAL**

Petitioner has filed a notice of appeal following this Court's denial of his habeas petition challenging as a violation of his constitutional rights the denial of parole by the California Board of Parole Hearings (Board).¹ The Court construes the notice of appeal as an application for a certificate of appealability. See United States v. Asrar, 116 F.3d 1268, 1270 (9th Cir. 1997); 28 U.S.C. § 2253(c)(3). He also moves for leave to proceed in forma pauperis on appeal.

Petitioner's request for a certificate of appealability is DENIED as unnecessary. The Ninth Circuit recently made clear that a state prisoner challenging the administrative decision by the Board to deny his request for parole need not obtain a certificate of appealability. See Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005).

Good cause appearing, Petitioner's request for leave to proceed in forma pauperis on appeal is GRANTED.

The Clerk of the Court shall process the notice of appeal.

This Order terminates Docket no. 14.

IT IS SO ORDERED.

DATED: 4/29/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

¹ The Board of Prison Terms was abolished effective July 1, 2005, and replaced with the Board of Parole Hearings. Cal. Penal Code § 5075(a).

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ANDREW HARVEY,
5 Plaintiff,

Case Number: CV07-00204 SBA

CERTIFICATE OF SERVICE

6 v.

7 BEN CURRY et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on April 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Andrew G. Harvey C-25646
16 Correctional Training Facility
17 P.O. Box 689
18 Soledad, CA 93960-0689

19 Dated: April 30, 2009

20 Richard W. Wieking, Clerk
21 By: LISA R CLARK, Deputy Clerk
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